

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO,
as representative of,

THE COMMONWEALTH OF PUERTO RICO, *et al.*,
Debtors.¹

PROMESA
Title III

Case No. 17-BK-3283 (LTS)

(Jointly Administered)

DRIVETRAIN, LLC, in its capacity as the Trustee of the
Commonwealth Avoidance Actions Trust,
Plaintiff,

v.

BARCLAYS CAPITAL, INC., *et al.*,
Defendants.

Adv. Proc. No. 19-280 (LTS)

**MOTION TO INFORM REGARDING NON-MOVING PARTY'S RESPONSE TO
DEFENDANTS' MOTION TO DISMISS THE SECOND AMENDED COMPLAINT**

¹ The Debtors in these Title III cases, along with each Debtor's respective Title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are (i) the Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481), (ii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686), (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808), (iv) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474), (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747), and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 17-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801).

Plaintiff Drivetrain, LLC, (“Drivetrain” or the “Trustee”) solely in its capacity as Trustee of the Avoidance Actions Trust (the “Trust”), pursuant to the Avoidance Actions Trust Agreement (the “Trust Agreement”), by and through its attorneys, Selendy Gay Elsberg PLLC, Casillas, Santiago & Torres LLC, and Continental PLLC, respectfully submits this informative motion pursuant to paragraph 2(a)(iii) of this Court’s *Second Amended Standing Order* [Case No. 17-BK-3283, Dkt. No. 15895-1, the “Standing Order”], and respectfully states as follows:

BACKGROUND

1. On May 2, 2019, the Special Claims Committee of the Financial Oversight and Management Board for Puerto Rico (the “SCC”), and the Official Committee of Unsecured Creditors of the Debtors (except PBA and COFINA) initiated this action by filing the *Adversary Complaint* (the “Complaint”).² [Dkt. No. 1].

2. On March 10, 2020, following several related orders staying this Adversary Proceeding, this Court issued its *Final Order Regarding (A) Stay Period, (B) Mandatory Mediation, And (C) Certain Deadlines Related Thereto* (the “Stay Order”). [Dkt. No. 22].

3. Pursuant to the Stay Order, this Court ordered that this Adversary Proceeding be stayed pending confirmation of the Oversight Board’s proposed plan of adjustment (as may be amended, modified, or supplemented, the “Amended Plan”).³

4. Pursuant to the *Order and Judgment Confirming Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, The Employees Retirement*

² On September 27, 2021, the Complaint was amended to add the PBA as a Title III Debtor. *See* Dkt. Nos. 25, 27, and 28.

³ More specifically, Amended Plan means the Modified Eighth Amended Title III Plan of Adjustment of the Commonwealth of Puerto Rico, et al., dated January 14, 2022 [Case No. 17-3283, Dkt. No. 19784].

System of the Government of the Commonwealth of Puerto Rico, and the Puerto Rico Public Buildings Authority (the “Confirmation Order”) [Case No. 17-3283, Dkt. No. 19813], this Court provided for the creation of the Avoidance Actions Trust and the appointment of the Avoidance Actions Trustee.

5. Specifically, “[o]n the Effective Date, the Debtors shall transfer all of the Avoidance Actions Trust Assets to the Avoidance Actions Trust and, in accordance with section 1123(b)(3)(B) of the Bankruptcy Code, the Avoidance Actions Trust shall have the sole right, authority, and standing to prosecute, settle or otherwise dispose of all Avoidance Actions, including, without limitation, [this action] as of the Effective Date.” *Id.* at 18.

6. The term “Avoidance Actions” as used in the Confirmation Order and the Amended Plan includes this adversary proceeding.

7. On March 15, 2022, the Trustee was appointed, and the Amended Plan became effective. [Case No. 17-3283, Dkt. No. 20349].

8. On September 15, 2022, the Trustee filed a Second Amended Complaint (the “SAC”) in this adversary proceeding. [Dkt. No. 49].⁴

9. On December 15, 2022, the Court so-ordered the parties’ stipulation and case management order setting a briefing schedule for Defendants to answer, move to dismiss, or otherwise respond to the SAC (the “Briefing Order”). [Dkt. No. 73].

⁴ Defendants in the above-captioned action are Barclays Capital, Inc.; BMO Capital Markets GKST Inc.; BofA Securities, Inc., a/k/a Banc of America Securities LLC, a/k/a BofA Merrill Lynch; Citigroup Global Markets Inc.; Citibank, N.A., New York; Goldman Sachs & Co. LLC; Goldman Sachs Bank USA; Goldman Sachs Mitsui Marine Derivative Products, L.P.; Jefferies LLC; J.P. Morgan Securities LLC; Merrill Lynch Capital Services, Inc.; Morgan Stanley & Co. LLC; Morgan Stanley Capital Services, LLC f/k/a Morgan Stanley Capital Services Inc.; RBC Capital Markets, LLC; Royal Bank of Canada; Samuel A. Ramirez & Co., Inc.; Santander Securities LLC; UBS Financial Services, Inc. of Puerto Rico; and UBS AG (collectively, the “Defendants”).

10. Pursuant to the Briefing Order, Defendants were required to answer, move to dismiss, or otherwise respond to the SAC on or before December 29, 2022. [Dkt. No. 73].

11. On December 29, 2022, Defendants filed a joint motion to dismiss the SAC pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, as made applicable to this adversary proceeding by Fed. R. Bankr. P. 7012(b) (the “Motion to Dismiss”). [Dkt. No. 134].

12. Section 2(a)(iii) of the Court’s Standing Order requires that within seven days after a motion pursuant to Fed. R. Civ. P. 12(b)(6) or 12(c) or Fed. R. Bankr. P. 7012(b) is filed, the non-moving party file an informative motion notifying the moving party of its intent to amend the complaint as of right, make any request for leave to amend in response to the motion or state that it will file its opposition to the motion without further amendment.

13. Pursuant to the Briefing Order, the time for the Trustee to file the informative motion required by Section 2(a)(iii) of the Standing Order was extended until January 12, 2023. [Dkt. No. 73].

THE TRUSTEE’S STATEMENT

14. Pursuant to paragraph 2(a)(iii) of the Standing Order, the Trustee hereby states that it intends to file its opposition to the Motion to Dismiss without further amendment to the Second Amended Complaint at this time.

15. The Trustee shall file its opposition to the Motion to Dismiss on or before April 12, 2023, in accordance with the Briefing Order. [Dkt. No. 73].

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Dated: New York, NY
January 12, 2023

Respectfully submitted,

By: /s/ David S. Flugman

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*Attorneys for Plaintiff Drivetrain, L.L.C., in its
capacity as the Trustee of the Commonwealth
Avoidance Actions Trust*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that we electronically filed the foregoing Motion to Inform with the Clerk of Court using the CM/ECF system, which will notify case participants.

/s/ David S. Flugman
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